TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 466.

HENRY CRAEMER, APPELLANT,

vs.

THE STATE OF WASHINGTON AND W. H. MOYER, SHERIFF OF KING COUNTY, WASHINGTON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON.

FILED SEPTEMBER 27, 1897.

(16,679.)

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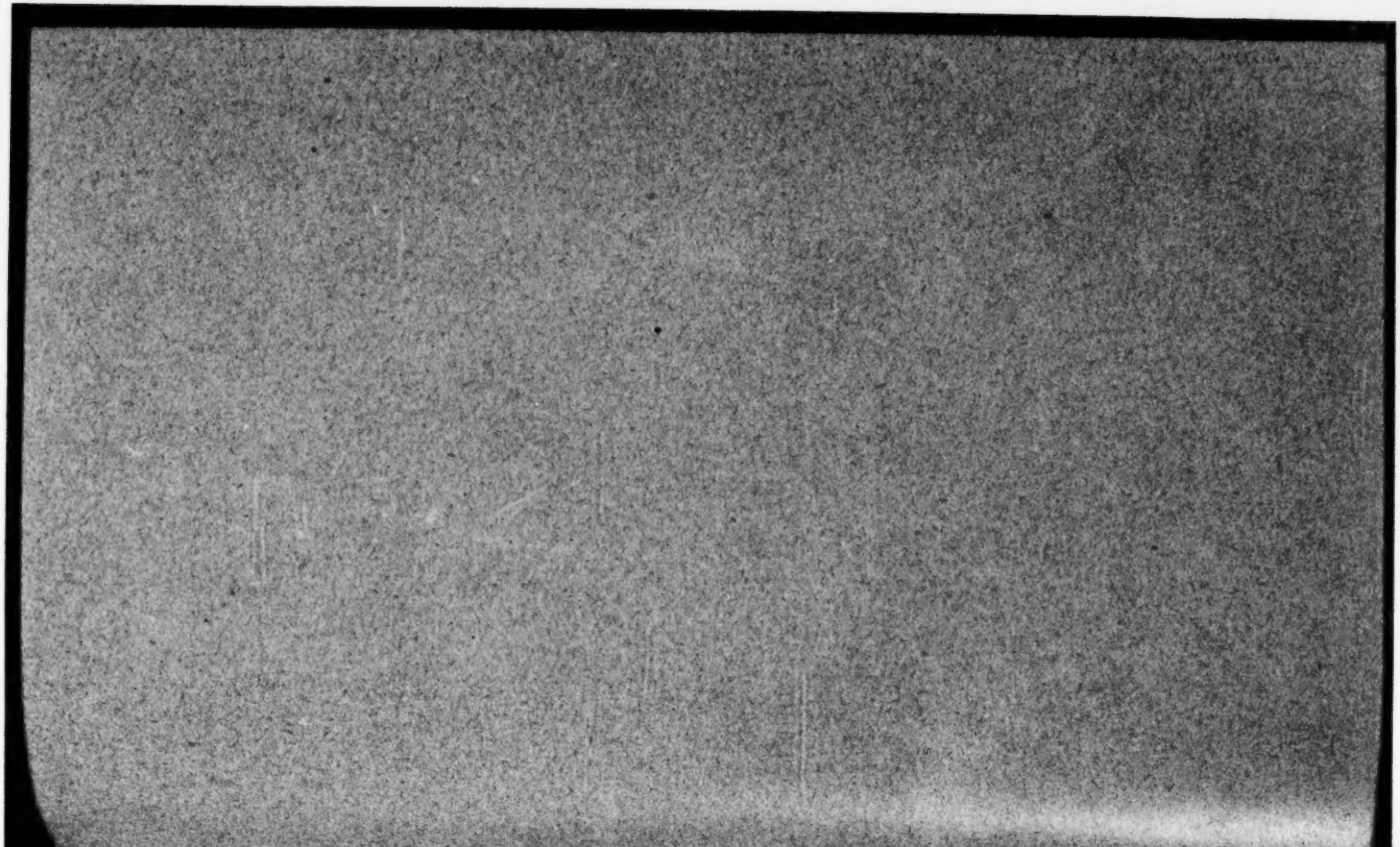

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INDEX.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 28, 1897.

a In the Circuit Court of the United States for the District of Washington, Northern Division.

In the Matter of the Application of HENRY CRAEMER for Writ of *Habeas Corpus* and Relief Thereon.

Transcript of the Record on Appeal.

Appeal from the circuit court of the United States for the district of Washington, northern division.

1 *Petition.*

In the United States Circuit Court for the District of Washington, Northern Division.

In the Matter of the Application of HENRY CRAEMER for Writ of *Habeas Corpus* and Relief Thereon.

To the honorable circuit court of the United States for the district of Washington and to the judges thereof:

Your petitioner, Henry Craemer, alleges and shows:

1. That he is a citizen and resident of the United States, residing in the county of King, at the city of Seattle, in the State of Washington.

2. That he is now against his will and without authority of law confined and restrained of his liberty and detained and unlawfully held in custody by William H. Moyer, sheriff of King county, and against his wish is being held by the said Moyer under threats by the said Moyer, as sheriff of King county, to take the life of this petitioner under alleged process and authority as hereinafter more fully stated.

3. Your petitioner further alleges that the said threat and attempt to take his life, which is set for and arranged to be, your petitioner understands, at once, and particularly in the month of July, on the day of the 23rd, is wholly without authority of law, without the jurisdiction of any court, contrary to the law, and contrary to the rights of your petitioner as a citizen of the United States under the Constitution of the United States, as will more particularly appear in matters hereafter stated.

4. Your petitioner informs the court that on or about the
2 23rd day of August, 1894, he was charged by the State of Washington by information of three separate crimes in one count, to wit, the crime of murder in the first degree, to which the penalty of death attached upon conviction; murder in the second degree, to which a penalty of not less than ten nor more than 20 years' imprisonment in the penitentiary attached, and the offense of manslaughter, to which not less than two nor more than 10 years' imprisonment in the penitentiary attached.

That your petitioner was tried upon the said information upon issue joined in the superior court of King county.

That to said issue a jury trying your petitioner did return him guilty of no greater offense than the offense of murder in the second degree, and by legal construction granting inferences and all presumptions in favor of your petitioner as accused, finding your petitioner guilty of no higher offense than that of manslaughter.

That the said jury in nowise found your petitioner guilty of murder in the first degree, to which the sentence and penalty of death could be inflicted.

That the said verdict was rendered about the 12th day of September, 1894.

5. That your petitioner appealed from the decision finding your petitioner guilty of murder in the second degree or of manslaughter to the supreme court of the State of Washington upon errors assigned, and the said judgment was affirmed.

And, further, upon the validity of the process under which your petitioner was charged, to wit, as to whether or not your petitioner could be tried upon an information for his life, your petitioner
3 appealed to the Supreme Court of the United States upon that point and that point alone, and the said Supreme Court dismissed said appeal, returning the said cause and all process to the supreme court of the State of Washington, to be dealt with as in manner and form of the law was both just and proper.

6. That at no time after the said verdict or upon any further hearing of the said cause upon appeal or pending any of its stages was ever any death warrant issued by any judge or court authorizing or assuming to take the life of your petitioner, or authorizing or assuming to order that your petitioner's life be taken, or warranting any person, sheriff or otherwise, to take the life of your petitioner. Thus there was no opportunity nor occasion to complain in the supreme court of the State or any other court as to the right to issue said death warrant or the authority for the same.

7. That at the time your petitioner was tried he was tried before the Honorable Thomas J. Humes, one of the judges of the superior court of the county of King.

That after the said cause had been disposed of in the supreme court of the State of Washington and the Supreme Court of the United States and returned to the superior court of the State of Washington for the execution of such process as would be legal in the premises the said Thomas J. Humes had ceased to be judge, the said Thomas J. Humes being the only judge who had heard the evidence in the cause and who had presided at the trial of your petitioner; and succeeding the said Thomas J. Humes came the Honorable Orange Jacobs, judge of the superior court of King county, elected and qualified.

8. That, to wit, on the 6th day of February, A. D. 1897, the
4 State of Washington moved that your petitioner be brought up for judgment and for other process against him, and moved the said Orange Jacobs, judge, to execute a warrant of death authorizing the taking of your petitioner's life for matters and things al-

leged, as was claimed in the record, to wit, upon the said verdict; and there was presented to the said judge a form of death warrant reciting matters and things in nowise true, in so far as the same assumed to recite any conviction of your petitioner of the crime of murder in the first degree; and your petitioner then and there duly objected, through his counsel, to the said Honorable Orange Jacobs assuming to pass sentence of death upon your petitioner, and particularly assuming to issue a death warrant against your petitioner ordering the taking of your petitioner's life by the said sheriff, W. H. Moyer, on the 23rd day of April, 1897, or at any time whatsoever, and duly insisted that the court was without jurisdiction to make such an order; that the same was wholly in excess of jurisdiction, was wholly in want of jurisdiction, and wholly without the authority of law, particularly was without any due process of law and was in violation of your petitioner's rights as a citizen of the United States and of the State of Washington, and particularly in violation of article 6 of the Federal Constitution of the United States, prescribing that the life of your petitioner or any other citizen shall not be taken without due process of law, and particularly in violation of article 14 of the Federal Constitution of the United States, specifically providing that no State shall by law or otherwise deny to your petitioner the right of exemption and immunity from unjust process, and particularly providing and prescribing against the taking of your petitioner's or any other citizen's life without due process of law and save and except upon a due judgment and conviction upon which the sentence of death necessarily and as a matter of law absolutely followed, and that under the laws of the State of Washington there was no authority in the said Judge Jacobs or the said superior court or any judge thereof to order the taking of the life of your petitioner upon a construction of the process or verdict or upon assumed construction of the law, or upon any pretense or authority.

9. That notwithstanding such objections duly presented before the said judge your petitioner was nevertheless ordered to be executed by the said Judge Jacobs, and the said Orange Jacobs did assume to and did order under his hand that your petitioner shall on the 23rd day of April, being Friday, of the year 1897, between the hours of 9 o'clock in the forenoon and 4 o'clock in the afternoon, be executed and his life be taken under and by authority of an alleged judgment in the said cause; that there was no authority for such order, none permitted by the laws of the State of Washington, was wholly contrary to the laws of the United States and to the Constitution of the United States, and to the rights of your petitioner as a citizen of the United States.

10. That under the laws of the State of Washington there was no time allowed further to appeal the said order or cause to the supreme court of the State of Washington from the order of the said Judge Jacobs as an original cause, as the time had expired in which said cause could be taken to the supreme court upon the wrongful order and upon the said order and authority so exercised without jurisdiction.

That upon application duly made John R. Rogers, governor of the State of Washington, granted a respite to your petitioner,
6 thus prolonging your petitioner's life and staying the execution of the death sentence for the period of ninety (90) days or until, to wit, the 23rd day of July, 1897.

That the next term of the supreme court of the State of Washington is not until the month of October, A. D. 1897, in which there would be any authority on the part of the court by any proceedings to review the unauthorized act of the said Judge Jacobs and of his honor the judge of the superior court, and as there is no law under which your petitioner can seek any stay, pending any attempt to seek relief from the supreme court of the State or from any other source, your petitioner has the only remedy left him as a citizen of the United States of appealing to this honorable court for rescue from an order seeking to take his life upon the ground that the same is wholly in excess of jurisdiction and wholly void for want of jurisdiction and without authority.

11. Your petitioner further shows that he has duly protested in everywise against the action of the said court and against the threatened action of the said sheriff, and particularly protested against that particular action which seeks in the manner and form herein stated to execute and carry out an alleged conviction and sentence thereon of your petitioner.

12. That your petitioner does not seek at the hands of the court absolute discharge unconditionally, but knowing the fact to be that an attempt to take his life is wholly in excess of jurisdiction by or upon behalf of any court of the State of Washington, and a wholly unauthorized act on the part of the sheriff of the county of King or any other person, and knowing that under the law the only
7 offense of which your petitioner has been duly convicted and to which sentence could legally attach is the crime of murder in the second degree, and under the reasonable construction granted by the law possibly only the offense of manslaughter, and under no circumstances by any construction of the law in anywise applicable of the crime of murder in the first degree, your petitioner seeks at the hands of the court the relief under such conditions as are allowable—that is, that your petitioner either be permitted the election of accepting his sentence upon a verdict of murder in the second degree, and that in the event of a failure on the part of the State of Washington to so act that your petitioner be discharged or held upon order to retry your petitioner upon the offense alleged in the information, or that proceedings against your petitioner be held void, and the court of the State of Washington be ordered to pronounce sentence and judgment against your petitioner as under the law appertaining to convictions of murder in the second degree, and no other could be had in the premises, or that upon due hearing of the cause and upon examining the records of the cause and the evidence in the cause your honor will make an order discharging petitioner, subject to the jurisdiction of the State court to proceed against petitioner for such offense only as it appears under the law to your honor your petitioner has alone been convicted of, and

which in law and in justice alone your petitioner could be sentenced upon.

13. That, for due information of the court, your petitioner respectfully announces to the court that the journal entries and the records in the superior court of the State of Washington, in this cause, known as number 1054, be, by writ of certiorari, duly certified before your honor for inspection and investigation, that the court may be duly advised in the premises, and that your honor will
8 grant unto your petitioner a writ of *habeas corpus* commanding your petitioner to be brought before the court at such time and place as to the court shall be convenient, whereat the court could inquire of the matters and things alleged by your petitioner, and that your honor would issue a writ of certiorari to the superior court of the county of King ordering to be duly certified to the court the records of this said cause for information, particularly the alleged information, the verdict, the judgment, and the death warrant made in the premises, and all other journal entries and orders in the cause, that your honor and the court may be informed of the premises, and that upon such record and upon hearing of the cause such further and other order can be made as in the premises will be right and proper.

And your petitioner will ever pray.

HENRY CRAEMER, *Petitioner.*
PRATT & RIDDLE,
Attorneys for Petitioner.

9 STATE OF WASHINGTON, } ss:
County of King, }

Henry Craemer, being first duly sworn, on oath says that he is the petitioner herein; that he knows the matters and things set forth in the petition, and of the matters of his own knowledge says they are true, and the other matters of law he is advised by his counsel that they are true, and therefore believes the whole of said petition to be true.

HENRY CRAEMER.

Subscribed and sworn to before me this 14 day of June, 1897.

[NOTARIAL SEAL.] S. S. LANGLAND,
Notary Public in and for the State of Washington, Residing at Seattle.

Indorsed: Petition. Filed June 14, 1897, in the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

10 *Præcipe for Appearance.*

United States Circuit Court for the District of Washington.

In re Application of HENRY CRAEMER for Writ of *Habeas Corpus* and Relief Thereon.

To the clerk of the above-entitled court:

You will please enter our appearance as attorneys for petitioner, Henry Craemer, in the above-entitled cause.

PRATT & RIDDLE.

Indorsed: Præcipe for appearance. Filed June 14, 1897. A. Reeves Ayres, clerk. R. M. Hopkins, deputy clerk.

11 *Order.*

In the Circuit Court of the United States, District of Washington, Northern Division.

In the Matter of the Application of HENRY CRAEMER for Writ of *Habeas Corpus* and Relief Thereon.

This cause coming on for hearing upon the petition of petitioner for a writ of *habeas corpus*, the court, being advised upon the petition and upon hearing counsel for petitioner, denies and refuses to grant the said writ; to which ruling of the court petitioner excepts; exception allowed.

Petitioner thereupon gives notice that he appeals from the said ruling of the court and from the whole and every part thereof, and appeals his said petition and his said cause and the whole and each and every part thereof to the Supreme Court of the United States, holding terms at the city of Washington, District of Columbia, and to the next regular term thereof, and particularly appeals from the said rulings of the said court denying and refusing to grant the said writ of *habeas corpus*.

Which said appeal is here and now allowed.

Done in open court this 14th day of June, 1897.

C. H. HANFORD, *Judge.*

Indorsed: Order. Filed June 14, 1897, in the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

12 *Præcipe.*

United States Circuit Court for the District of Washington.

In the Matter of the Application of HENRY CRAEMER for Writ of *Habeas Corpus* and Relief Thereon. No. 624.

To the clerk of the above-entitled court:

You will please issue citation in the above-entitled cause.

PRATT & RIDDLE,

Att'ys for Petitioner, Henry Craemer, and Appellant Herein.

Indorsed: Præcipe. Filed June, 21, 1897. A. Reeves Ayres, clerk, A. N. Moore, deputy clerk.

13 *Notice.*

In the Circuit Court of the United States, District of Washington, Northern Division.

In the Matter of the Application of HENRY CRAEMER for Writ of *Habeas Corpus* and Relief Thereon.

To Honorable W. H. Moyer, sheriff of King county, State of Washington:

You will take notice hereby that Henry Craemer, now in your custody, duly petitioned the United States circuit court for a writ of *habeas corpus*, seeking relief thereupon; and

Whereas the said writ and relief was denied; and

Whereas said petitioner duly moved for the right of appeal and for the transfer of his whole cause to the Supreme Court of the United States; and

Whereas the said cause came on for argument as to the granting of the said appeal and the transfer of the whole cause to the appellate court, and was heard upon the 14th day of June, 1897, by the Hon. C. H. Hanford, circuit judge; and

Whereas, after hearing said application, an order of appeal was duly granted, and the said cause was so ordered transferred to the Supreme Court of the United States, a full copy of the aforesaid proceedings and the order allowing the said appeal, being duly certified, is hereunto annexed for your information and advice; and

Whereas, under the Revised Statutes of the United States, being the laws of the United States, particularly section 766 of the said Revised Statutes reads as follows, to wit:

SEC. 766. "Pending the proceedings," etc. (section copied
14 in full); and

Whereas the Supreme Court of the United States, *In re* Jugiro, 140 U. S., 295, construing the said section, defined the same to mean "in cases," etc. (copied verbatim from *Re* M'Kane, 61 Fed., 205 a- 206), which decision is more fully referred to in the case of *In re* M'Kane, 61 Fed., 205, where it was held to mean that until final decision in the Supreme Court of the United States no disturbance of the condition of the prisoner as he was at the time of the denying of the writ can in anywise be had;

Therefore you are hereby notified that you are to hold possession or custody of the said petitioner, Henry Craemer, now in your keeping at the city of Seattle, county of King, State of Washington, in such manner as to your discretion shall seem meet and proper, in no wise assuming for any cause to execute any sentence of death whatsoever upon the said petitioner, Henry Craemer, and you will be duly notified of any further proceedings in the premises.

You will govern yourself accordingly.

Respectfully, PRATT & RIDDLE,
Attorneys for Petitioner.

15 UNITED STATES OF AMERICA, }
District of Washington, County of King, } ss:

Copy of the within notice received and service of the same is hereby acknowledged this 21 day of June, 1897.

WM. H. MOYER,
Sheriff of King County, State of Washington.
JAMES H. McELROY,
Prosecuting Attorney for King County, State of Washington.

Indorsed: Notice to sheriff. Filed June 21, 1897, in the U. S. circuit court. A. Reeves Ayres, clerk, by A. N. Moore, deputy.

16 *Notice of Appeal.*

In the Circuit Court of the United States, District of Washington, Northern Division.

In the Matter of the Application of HENRY CREAMER for Writ of *Habeas Corpus* and Relief Thereon.

To the State of Washington and to Hon. W. H. Moyer, sheriff of King county, State of Washington, and to Hon. Jas. F. McElroy, prosecuting attorney for King county, State of Washington:

Comes now the petitioner, Henry Craemer, and appeals the above-entitled cause and the whole thereof to the Supreme Court of the United States, holding terms at the city of Washington, District of Columbia, and to the next regular term thereof, and more especially appeals from that certain order made and entered in the above-entitled cause on the 14th day of June, 1897, by the Honorable C. H. Hanford, judge, sitting as the circuit court, denying the petition of petitioner for a writ of *habeas corpus* and refusing to grant the said writ of *habeas corpus*, as in his said petition prayed.

And you will take notice that the record and proceedings upon the said petition will be duly certified through the said above-entitled court to the said Supreme Court of the United States at the next regular term thereof upon said above-named appeal.

PRATT & RIDDLE,
Attorneys for Petitioner.

17 UNITED STATES OF AMERICA, }
District of Washington, County of King, } ss:

Copy of the within notice of appeal received, together with a duly certified copy of the order allowing the appeal in said cause, and service of the same is hereby acknowledged this 21st day of June, A. D. 1897.

WM. H. MOYER,
Sheriff of King County, State of Washington.
JAMES F. McELROY,
Prosecuting Attorney for King County, State of Washington.

Indorsed: Notice of appeal. Filed June 21, 1897, in the U. S. circuit court. A. Reeves Ayres, clerk. By A. N. Moore, deputy.

18 UNITED STATES OF AMERICA, *ss:*

To the State of Washington and to Hon. W. H. Moyer, sheriff of King county, State of Washington, and to Hon. Jas. F. McElroy, prosecuting attorney for King county, State of Washington, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, within sixty (60) days from the date hereof, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of Washington, northern division, wherein Henry Craemer, petitioner, is appellant and you are respondents and appellees, to show cause, if any there be, why the judgment in the said appeal mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 21st day of June, A. D. 1897, and of the Independence of the United States the one hundred and 21st.

[Seal U. S. C. C.]

A. REEVES AYRES,
Clerk of the Circuit Court of the United States for the District of Washington.
By A. N. MOORE, *Deputy Clerk.*

Service of the within citation and copy of the same received and accepted this 23 day of June, A. D. 1897.

WM. H. MOYER,
Sheriff of King County, Washington.
JAS. F. McELROY,
Prosecuting Attorney for King County, Washington.

Indorsed: Citation. Filed July 23, 1897, in the U. S. circuit court. A. Reeves Ayres, clerk, by A. N. Moore, deputy.

19 *Præcipe.*

United States Circuit Court for the District of Washington.

In Re the Application of HENRY CRAEMER for Writ of *Habeas Corpus* and Relief Thereon. No. 624.

To the clerk of the above-entitled court:

You will please issue transcript of record on appeal in the above-entitled action.

PRATT & RIDDLE.

Indorsed: Præcipe. Filed July 23, 1897. A. Reeves Ayres, clerk. A. N. Moore, deputy clerk.

20 In the Circuit Court of the United States for the District of Washington, Northern Division.

In the Matter of the Application of HENRY CRAEMER for Writ of *Habeas Corpus* and Relief Thereon. No. 624.

Clerk's Certificate.

UNITED STATES OF AMERICA, } *District of Washington,* } *ss:*

I, A. Reeves Ayers, clerk of the circuit court of the United States, ninth judicial circuit, district of Washington, hereby certify the foregoing nineteen (19) typewritten pages, numbered from one (1) to nineteen (19) inclusive, to be a full, true, and correct transcript of the record on appeal from the circuit court of the United States for the district of Washington to the Supreme Court of the United States, wherein Henry Craemer, petitioner, is appellant, and William H. Moyer, sheriff of King county, State of Washington, and The State of Washington are respondents and appellees, and that the same constitutes the transcript of the record upon said appeal in said cause from the said circuit court of the United States for the district of Washington to the Supreme Court of the United States.

I further certify that the cost of preparing and certifying the foregoing transcript is the sum of six dollars and five cents ($6.05), and that the same has been paid to me by Messrs. Pratt & Riddle, attorneys for petitioner and appellant in this cause.

Witness my hand and the seal of said circuit court at Seattle, Washington, this 5th day of August, A. D. 1897.

{ Seal United States Circuit Court, District of Washington, Northern Division. }

A. REEVES AYERS, *Clerk,*
By R. M. HOPKINS,
Deputy Clerk.

21 UNITED STATES OF AMERICA, *ss:*

To the State of Washington and to Hon. W. H. Moyer, sheriff of King county, State of Washington, and to Hon. Jas. F. McElroy, prosecuting attorney for King county, State of Washington, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, within sixty (60) days from the date hereof, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of Washington, northern division, wherein Henry Craemer, petitioner, is appellant, and you are respondents and appellees, to show cause, if any there be, why the judgment in the said appeal mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 21st day of June, A. D. 1897, and of the Independence of the United States the one hundred and 21st.

{ Seal United States Circuit Court, District of Washington, Northern Division. }

A. REEVES AYRES,
Clerk of the Circuit Court of the United States for the District of Washington,
By A. N. MOORE, *Deputy Clerk.*

[Endorsed:] In the U. S. Supreme Court. Henry Craemer *vs.* Wm. H. Moyer. Citation. Filed July 23, 1897. In the U. S. circuit court. A. Reeves Ayres, clerk, A. N. Moore, deputy.

Service of the within citation and copy of the same received and accepted this 23 day of June, A. D. 1897.

WM. H. MOYER,
Sheriff of King County, Washington.
JAS. F. McELROY,
Prosecuting Attorney for King County, Washington.

Endorsed on cover: Case No. 16,679. Washington C. C. U. S. Term No., 466. Henry Craemer, appellant, *vs.* The State of Washington and W. H. Moyer, sheriff of King county, Washington. Filed September 27, 1897.

No. 466.

Brief of Jones for Appellee (Mo

Filed Sept. 27, 1897.

Supreme Court

OF THE

United States

October Term, 1897

Office Supreme Court, U
FILED
SEP 27 1897
JAMES H. McKENN
CL

HENRY CRAEMER,

Appellant,

vs.

W. H. MOYER, SHERIFF OF KING COUNTY, WASHINGTON, AND THE STATE OF WASHINGTON,

Appellee.

Appeal to the Supreme Court of the United States

MOTION TO DISMISS

PATRICK HENRY WINSTON,
JAS. F. McELROY,
W. C. JONES,
Attorneys for Appellee.

Review Print, Tel. Black 1133

IN THE

Supreme Court

OF THE

United States

October Term, 1897

HENRY CRAEMER,

Appellant,

vs.

W. H. MOYER, SHERIFF OF KING COUNTY, WASHINGTON, AND THE STATE OF WASHINGTON,

Appellee.

Appeal to the Supreme Court of the United States

MOTION TO DISMISS

Comes now William H. Moyer, Sheriff of King County, State of Washington, and the State of Washington, appellee herein, by Patrick Henry Winston, the Attorney General of the State of Washington, and James F. McElroy, the Prosecuting Attorney in and for King County, Washington, and W. C. Jones, Esq., attorney at law, and moves the Court to dismiss and

set aside the appeal herein and all of the proceedings taken by the petitioner, the appellant herein, and that the judgment of the Circuit Court be affirmed for the following reasons :

FIRST : Said appeal is taken for delay only.

SECOND : Said appeal is frivolous.

STATEMENT OF THE CASE.

The petition filed by the appellant herein is composed, for the most part, *of allegations of conclusions of law*, but it also shows the following facts : that William H. Moyer is the duly elected, qualified and acting Sheriff in and for King County, Washington, and that the appellant is a citizen and resident of the United States and of the State of Washington; that on the 25th day of August, 1894, the appellant was charged by information by the State of Washington with having committed the crime of murder in the first degree; that within said charge of murder in the first degree, as made in the information, is included also the two lesser degrees of homicide, known under the laws of the State of Washington as, to-wit, that of murder in the second degree, and that of manslaughter.

That the appellant was tried upon the information and on issue joined in the Superior Court of King County, Washington, and was on the 12th day of September, 1894, found guilty as charged in the information, and the Superior Court of King County thereafter on said verdict of "guilty" and on the 13th day of October, 1894, duly adjudged the said appellant

guilty of the crime of murder in the first degree, and the said appellant was then sentenced by the court to be hanged in accordance with the laws of the State of Washington ; that thereafter the appellant herein, being the defendant at the trial court, duly appealed from the judgment and sentence so rendered against him, to the Supreme Court of the State of Washington, on which appeal all of the various and diverse questions herein alleged in appellant's petition were presented to the Supreme Court of the State of Washington, and on the hearing by the Supreme Court of the State of Washington of said appeal, the judgment and sentence of the lower court was affirmed.

State vs. Craemer, 12 Washington, 217.

That thereafter the appellant herein, being the defendant in the cause below, sued out a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Washington, and the same was thereafter by the Supreme Court of the United States dismissed, the judgment of the Supreme Court being affirmed.

That thereafter on the 20th day of February, A. D. 1897, the Superior Court of King County, Washington, acting by and through the Honorable Orange Jacobs, Judge of said Court, set the 23rd day of April, A. D. 1897, as the day for carrying into effect the death sentence heretofore rendered and pronounced by the said Court against the appellant herein, and issued a death warrant ordering said judgment and sentence to be carried into effect on said last above named day.

That thereafter, on the application of the appellant, the Governor of the State of Washington granted a respite in this cause staying the execution of the

death sentence herein until the 23rd day of July, A. D. 1897, and no longer.

That thereafter, to-wit, on or about the 14th day of June, A. D. 1897, the appellant herein, the same being the defendant in the trial court, filed his petition in the Circuit Court of the United States for the District of Washington, the Northern Division, and before the Honorable C. H. Hanford, Judge thereof, praying that a writ of *habeas corpus* might issue ; that the Circuit Court on hearing and considering the application of appellant for a writ of *habeas corpus* refused to issue the same, and from said refusal to issue said writ of *habeas corpus* and to grant the same as prayed for in his petition, the appellant herein, being the petitioner in said cause, brings this appeal to this Court.

ARGUMENT.

This motion to dismiss and to affirm the judgment of the lower court should be affirmed for the following reasons :

I.

The case presents no Federal question for the consideration of this Court, in that the rights of the appellant herein, defendant in the cause below, guaranteed him by the Constitution and laws of the United States, have not been infringed or *denied* him.

II.

That the appeal upon its face shows that it was

taken for the purpose of delay *only* and that it is frivolous.

III.

That the allegations contained in the said petition of appellant as filed in the Circuit Court, is one of conclusions of law principally, and from the face of the petition it is manifest that it does not show "the facts concerning the detention of the appellant."

IV.

For other good and sufficient reasons appearing on the face of the record.

The appellant in his petition alleges that his rights under the Constitution of the United States, and under Article 6 thereof, have been violated in that due process of law has not been accorded him ; and further alleges that his rights as secured to him under Article 14 of the Constitution of the United States (presumably the 14th Amendment) have been violated in that the privileges and immunities secured to appellant herein, together with other citizens, were denied him.

These allegations are found in the *eighth* paragraph of the appellant's petition, but in *no place* in the petition is there *an allegation of fact* showing the manner in which the appellant's rights have been, or are, denied to him as secured under either Article 6 of the Constitution of the United States, or under the 14th Amendment to the Constitution of the United States, or under any other provision in the Constitution contained.

It is submitted that a careful reading of the petition will show that it does not "*set forth the facts con-*

cerning the detention" of the appellant and of which he complains; that it simply alleges in a general manner that "he is without authority of law confined and restrained of his liberty and detained" and "unlawfully held in custody." (Paragraph 2 of the Petition.)

But "wholly without authority of law, without the jurisdiction of any court contrary to the rights of the petitioner as a citizen, etc." (Paragraph 3 of Petition.)

That he was found "guilty of no greater offense than that of murder in the second degree." (Paragraph 4 of Petition.) And so on through the petition in full and at length and in each paragraph thereof is found principally *allegations of conclusions of law.*

It is submitted that each and every of these allegations found in the petition, together with other allegations of a similar character, are allegations of conclusions of law, and are *not allegations of fact.*

Section 754, Revised Statute U. S., provides, "that the facts concerning the detention must be set forth in the petition." This the appellant has not done, and before he is entitled to any relief, the facts should be set forth.

Graham vs. Weeks, 138 U. S., 461.

Whitten vs. Tomlinson, Sheriff, etc., 160 U. S. 232.

It is presumed that the propositions which the appellant seeks to raise in his petition are as follows:

I.

That he was charged in the information on which

he was tried and convicted with the crime of murder in the first degree, and that because under the law of the State of Washington, an information charging a crime of that character embraces not only a charge of murder in the first degree, but also of murder in the second degree and of manslaughter, both being lesser offenses; that he was charged with three separate offenses, hence denied the due process of law accorded him by the Constitution of the United States.

II.

That the verdict rendered in this cause against the defendant was one finding the defendant "guilty as charged in the information," and that said verdict is uncertain in that the information charges the commission of three crimes, and the verdict does not distinctly point out of which crime the defendant is guilty.

After his conviction in the trial court the appellant appealed to the Supreme Court of the State of Washington, and in that appeal the sufficiency of the information was raised and discussed, and the Supreme Court of the State of Washington in affirming the judgment of the lower court held that the information was sufficient under the laws of that state.

State vs. Craemer, 12 Washington, 217.

Laws of Washington 1891, page 60,

and in Sections 75 and 76 thereof, it is provided as fallows:

Sec. 75: "Upon an information for an offense consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the *

* * information, and guilty of any degree inferior thereto * * *."

Sec. 76: "In all other cases the defendant may be found guilty of an offense, the commission of which is necessarily included within that with which he is charged in the * information."

The form of the verdict is provided by the laws of the State of Washington, and is found in what is known as the Second Vol. of Hill's Code, Sec. 1325, and is as follows, the formal parts being omitted: "The jury in the case of the State of Washington, plaintiff, vs.————————, defendant, find the defendant (guilty or not guilty, as the case may be.)

This form of verdict on an information charging the defendant with having committed the crime of murder in the first degree has been held sufficient in the state of Washington.

Timmerman vs. Territory of Wash., 3rd Wash. Territory, Rep., 445.

and the holding of the highest court of this state in the case last above cited makes *that the settled law of the state.*

The contention of the appellant is answered by the statement of the known holdings of this court to the effect that the contention as to what should or should not be placed in an information, and as to what is the proper method of trial procedure, is a matter over which the legislature of the various states has control, and one by which the constitution of the United States is not infringed, and the holdings of the higher courts of the various states on matters of this kind is final, when within their respective jurisdiction.

Ex Parte Richard S. Parks, 93 U. S., 18.
Kohl vs. Lehlback, Sheriff, etc., 160 U. S., 293.
Graham vs. Weeks, etc., 138 U. S., 461.
Jugiro vs. Bush, etc., 140 U. S., 291.

From the allegations appearing in the petition as filed by appellant, it is manifest that the circuit court ruled correctly in refusing to issue the writ as prayed for therein.

Ex Parte Terry, 128 U. S., 301.
In Re Wadkins, 3rd Peters, 193.

The contention which the appellant herein has sought to raise, having been passed upon by the highest court of the State of Washington, and the sentence of the lower court having been affirmed, and the cause then by the appellant having been taken by writ of error to the Supreme Court of the United States, and that court having in effect affirmed the judgement of the Supreme Court of the state, the judgment of the Supreme Court of the State of Washington is now the settled law of that state and of this case, and the action of the circuit court of the United States in refusing to grant the writ of *habeas corpus* as prayed for by the appellant herein was correct.

WHEREFORE, the appellee in this case moves this honorable court to dismiss the appeal herein and to affirm the judgment of the lower court in refusing to grant said writ of *habeas corpus*.

PATRICK HENRY WINSTON,
JAS. F. McELROY,
W. C. JONES,
Attorneys for Appellee.

To Messrs. Pratt & Riddle, Attorneys for Appellant herein:

PLEASE TAKE NOTICE: That the foregoing and attached motion to dismiss the appeal and to affirm the judgment of the Circuit Court rendered in the foregoing named cause, will be brought on for hearing before the Supreme Court of the United States in the City of Washington, D. C., on Monday, the 11..... day of...October..., A. D. 1897, at 12 o'clock noon, of that day, or as soon thereafter as counsel can be heard.

PATRICK HENRY WINSTON,
JAS. F. McELROY,
W. C. JONES,
Attorneys for Appellee.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1897.

HENRY CRAEMER,

Appellant,

vs.

W. H. MOYER, SHERIFF OF KING COUNTY, WASHINGTON, AND THE STATE OF WASHINGTON,

Appellee.

An Apppeal to the Supreme Court of the United States.

AFFIDAVIT OF SERVICE.

STATE OF WASHINGTON, } ss.
COUNTY OF KING }

John B. Hart, being first duly sworn, upon oath deposes and says: That he is the Deputy Prosecuting Attorney of King County aforesaid, and a citizen of the United States, over the age of twenty-one years; on the 16th day of August, A. D. 1897, I duly served the within motion and notice upon the appellant, Henry Craemer, and Messrs Pratt & Riddle, his counsel, by delivering to each personally in King County, Washington, three copies of this motion and notice.

JOHN B. HART.

Subscribed and sworn to before me this 18th day of August, 1897.

JAMES F. McELROY,

Notary Public in and for the State of Washington, Residing at Seattle

No. 466.

Brief of Lewis for Appt. on Mo

Filed Oct. 9, 1897.

IN THE

Supreme Court

OF THE

United States

October Term, 1897

HENRY CRAEMER,

Plaintiff.

vs.

WILLIAM MOYER, SHERIFF OF KING COUNTY, STATE OF WASHINGTON, AND THE STATE OF WASHINGTON,

Appellees.

In Error to the Circuit Court of the United States for the District of Washington. Northern Division.

Brief of Appellant on Motion to Dismiss.

JAS. HAMILTON LEWIS,
CHARLES A. RIDDLE,
JOHN W. PRATT,
Counsel for Appellant.

IN THE

SUPREME COURT

OF THE

United States.

HENRY CRAEMER,

Plaintiff.

vs.

WILLIAM MOYER, SHERIFF OF KING COUNTY, STATE OF WASHINGTON, AND THE STATE OF WASHINGTON,

Appellees.

In Error to the Circuit Court of the United States for The District of Washington. Northern Division.

Brief of Appellant on Motion to Dismiss.

The appellant begs to impress upon the court that this appeal by law must be determined upon what the record says, upon what is admitted, and altogether upon the statements admitted to be true by the lower court in denying even a rule to show cause why the writ should not issue.

No attempt by respondents to inform the court what they believe was the intent of appellant or was the cause of this appeal, when disclosed by evidence, or what was the construction sought by appellant can be considered by this court; for such would deny the appellant the opportunity of disproving the assumptions of respondents, or of meeting or denying them.

Upon the admitted record, as upon complaint upon which merely summons is asked, will the court now determine the only question before it, to-wit: Should not the lower court, upon the petition admitted as true, have granted to petitioner the writ of Habeas Corpus, or what petitioner prays for, some rule to show cause why the writ should not issue? a mere summons; some opportunity for some sort of hearing upon his admitted complaint.

Thus the only question before this Court resolves itself into this one: Was not the petitioner entitled to some sort of process upon the admitted allegations of his petition, by which he could have presented his alleged wrongs which involve his life?

As the record stands, the Court is not even called upon to make the ordinary inquiry necessary to causes similar to this previously before the Court, to-wit: *What are the merits of the petition upon the hearing?*

This cause is limited by the lower Court's action to the only question—should not the petitioner, upon the petition, have been given the right of having some opportunity for a hearing?

This is the only query in this cause.

IT IS ADMITTED that the lower Court

Refused to issue the writ;

Refused to issue an order to show cause;

Refused to make any order restraining respondents from taking the life of this petitioner;

Refused to take any form of jurisdiction in anywise whatsoever.

We now consider what are the allegations of the petition and what facts are admitted by the respondents, as appear from the record:

1. That as a citizen of the United States he is held by the respondent, Sheriff, who threatens and attempts to take his life.

Petition, paragraphs 1 and 2, (admitted).

2. That petitioner was charged with three offenses, to-wit:

Murder in the first degree,

Murder in the second degree, and

Manslaughter.

That the jury by verdict convicted petitioner, after trial, of the only offense of murder in the second degree, granting all presumptions of construction to the State, to which offense by law of the State of Washington no legal punishment for more than twenty years' imprisonment in the penitentiary could in anywise legally be imposed.

That the petitioner was never convicted by jury of murder in the first degree, or of any offense to which the sentence of death could legally or at all be attached.

Petition, paragraph 4, (admitted).

3. That appeals to the Supreme Court of the State of Washington and all appeals permitted by State law had been taken; all remedies exhausted Petitioner being denied his relief upon the ground that there was no local law permitting appeals upon questions such as raised by petitioner. That all steps preliminary for applying for a writ of Habeas Corpus had been taken.

Petition, paragraphs 5 and 6, (admitted).

4. That petitioner only sought to have such punishment inflicted upon him as by the local law could be had upon the verdict and judgment in the cause.

That petitioner presented before the court the document-

ary evidence taken from the records and journals of the State Court, establishing the facts of petitioner's complaint.

All of which allegations are admitted. The records and journal entries referred to neither dispute nor does any construction of respondents offer to justify the threatened action of respondents.

Petition, paragraph 13, (admitted).

That there was not only no due process, but no process of any nature whatsoever upon which petitioner's life could be taken.

Upon all of these admitted facts was it not a violation of the Constitution and the law to take the petitioner's life? Would it not be equally so to attempt to take his life? Is he not entitled to a hearing that he may be relieved of the threat and attempt to take his life, upon a process which, as admitted, only justifies, authorizes, or permits by State law, imprisonment in the penitentiary?

Was not the immunity granted by the Constitution of the United States to the petitioner, saying that his life should not be taken without due process of law a right and privilege to be enforced upon the admitted facts in the Federal Court?

Should not the Federal Court take jurisdiction upon the admitted facts so as to prevent the State, or other person, from taking the life of petitioner where there was, as admitted, no due or other process of law for the same?

We respectfully insist that under the law petitioner's only resort, his proper and constitutional resort, was for a hearing before the Federal Court in order that his constitutional right of life be not taken from him without due process of law.

Without elaborating the cases it is sufficient to cite them

by name to remind the Court that at no time has this Court or any United States Court, upon such a state of facts and record as is here presented, ever denied a petitioner some form of hearing and some form of relief, and in each instance this relief was had through the only mode pointed out by United States law, at a hearing through the proceeding of Habeas Corpus.

Ex parte Royall, 117 U. S., 241.

Ex parte Wilson, 115 U. S., 417.

Ex parte Kemmler, 136 U. S., 436.

Ex parte Terry, 128 U. S., 289.

Wood vs. Brush, 140 U. S., 278.

Ex parte Frederich, 149 U. S., 70.

Ex parte Neilson, 131 U. S., 176.

The whole trend of all of these decisions establishes what the Court in its own words has announced, to-wit: "A party is entitled to a Habeas Corpus, not merely where the Court is without jurisdiction of the cause, *but where it has no constitutional authority or power to condemn the prisoner*" (Italics are ours).

These views, with expressions and separate elaborations, depending upon the particular facts in each case, have frequently been announced. In citing

Ex parte Neilson, (Supra),

Ex parte Lange, 18 Wall, 163,

Ex parte Siebold, 100 U. S., 371,

Re Snow, 120 U. S., 274,

Re Coy, 127 U. S., 731,

reference is fully made and some recurrence to them now will demonstrate that petitioner has been careful to bring

himself within the exact requirements of these separate rulings and here and now insists that the case of

Re Coy, 127, U. S., 731,

brought up by petition for Habeas Corpus upon allegations therein admitted by demurrer to the petition is exactly parallel with the case at bar, and that the words of Mr. Justice Miller, speaking for the Court, in that case, saying, " * * if * want of power appears on the face of the record * * whether in the indictment or elsewhere, *the Court which has authority to issue the writ is bound to release him.*"

We respectfully insist that the record in that cause together with the reasoning and the decision is parallel and ruling in the present case now before the Court.

To the same effect has ever the law been declared.

Ex parte Mayfield, 141 U. S., 107.

Holding the Court's right to go even outside of the record.

Ekiu vs. United States, 142 U. S., 651.

Ex parte Burrus, 136 U. S., 586.

The construction of sections 751-755, 761 of the Revised Statutes is taken up in

Whitten vs. Tomlinson, 160 U. S., 231,

and the doctrine laid down in

Ex parte Royall, (supra),

reasserted.

We insist that this cause is directly within the exceptions marked out in

Andrews vs. Schwartz, 156 U. S., 272,

and particularly within the Chief Justice's suggestion as to when the Court will take jurisdiction—both as to the manner of the statements in the pleading and the subject matter—as stated in

Kohl vs. Lehlback, 160 U. S., 293.

(Note.—The statutes of the State of Washington applicable hereto are incorporated herein at the conclusion of this brief.)

PLEADING.

As an escape from the conclusions irresistibly reached by the record, it is asserted by the respondents that the fault lies in the pleading, to-wit: That the petition does not state facts with sufficient detail. We deny such statement. But aside from controverting the allegation, it must be noted that petitions for Habeas Corpus are not governed by ordinary rules of pleading applicable to complaints in civil actions. This is established by so many rulings that we refrain from citing at this point the train of cases.

Clear is this—

1. It is not a suit, but a proceeding.

2. Having for its object the avoidance of circuitous detail, it provides for the mere statements however crude, that a citizen is being deprived either of life or liberty unconstitutionally.

The assertion of any one fact upon this line entitles him to a hearing and investigation. The object of the law being not to avoid, but to accept, under all conditions, the opportunity of hearing the complaint of those in jeopardy of life or liberty.

For such was the Habeas Corpus enacted.

We have heretofore shown that the statements in the petition stated with particularity facts. It will be further noted that

Revised Statutes, 754, *et seq.*, and

2 Hill's Code of Washington, Sec. 712, *et seq.*,

present the form of pleading in Habeas Corpus, which is followed literally.

Therefore, following this provision of the Code substantially is all the Code requires.

2 Hill's Code of Washington, Sec. 206.

Following, therefore, the Code substantially is all the United States Courts require in such matters.

Roberts vs. Lewis, 144 U. S., 367,

and decisions subsequent.

We analyze the complaint and observe the specific facts:

1. In actual imprisonment and about to be hung by respondents.

2. Never been convicted for any offense justifying death sentence or authorizing such. (Is not this a statement of fact, and is it not admitted?)

3. That he was convicted of an offense which, by law, only sentenced him, at the very uttermost, to imprisonment in the penitentiary, to-wit: Murder in the second degree. (Is not this a statement of fact?] Would all the elaboration possible, beginning from the time of his arraignment, including every step of his trial, state a fact any more clearly as a fact?

4. That there is no law in existence authorizing the taking of his life for the offense of which he has been convicted. (Is not that a fact?)

5. That he has taken his appeal to the different State Courts, but denied relief. (Is not that a statement of a fact?)

6. That the evidence of his statements is contained in the records of the State Court. Sets forth the number of the record and the place of its existence. (The very manner of pleading such Record and referring thereto as required by the Code.) Is this not a statement of fact?

Are not all of these facts admitted?

Therefore, under Section 754 of the Revised Statutes, the respondents making no return and no other evidence in anywise being tendered or suggested, are these facts not binding as admissions upon this Court as they must be upon the Court below?

This Court will not assume that the facts could have been controverted by return or by evidence in order to presume a reason for the lower Court's refusal to take any action.

This Court will compel a lower Court to be diligent and have placed upon the Record by proper hearing, what proper course and proceeding was had upon any matter that might have existed which would excuse or justify the Court in refusing process upon the petition for a writ.

We call to the Court's attention that petitioner has complied with, and is strictly within, the rule of pleading laid down by this Court in

Re Coy, 127 U. S., 731,

and particularly in

Whitten vs. Tomlinson, 160 U. S., 231.

In that case the allegation held insufficient was "that no indictment was ever found against him by any grand jury * * * within the State of Connecticut, nor no indictment as and for a true bill ever was presented * * * in said state of Connecticut."

Truly, as said the Court, there is no allegation that no indictment has been returned against him from any state, nor that there is no conviction whether by indictment marked a true bill or not. But the case at bar meets the words of Mr. Justice Gray by stating *that no conviction of murder in the first degree or of any offense involving his life at any time or place exists*

or existed against the petitioner upon which his life was sought. (Is not this a fact and clear without equivocation which could give rise to construction that could negative it?)

Is not the Record in exactly the condition which the Court says would be sufficient if the Record in Whitten vs. Tomlinson, *supra*, had been so?

Again we are within the case of

Kohl vs. Lehlback, 160 U. S., 293.

The very requirements upon the question of pleading demanded by this Court is set out in

Ex parte Cuddy, 131 U. S., 280.

The writer of this brief, who prepared the petition, specifically complied with the same; saying, that the petition should set forth "the fact, concerning the detention of the party restrained, in whose custody he is detained, and by virtue of what claim or authority, if known." R. S., Sec. 754; and further, the facts that the Court had no jurisdiction or the person no authority to execute the threatened process.

In the case at bar, to avoid the conclusions of the Cuddy case, your petitioner specifically alleges that he has done *no act at all* by which he should suffer death, and he sets out that he was convicted of murder in the second degree, that for such offense, at the time of the offense and the conviction, and now, only the punishment of imprisonment existed. Are these not plain facts and directly within the exception and rule announced in the Cuddy case? Could not the Lower Court see that and, knowing the law, was he not called upon to recognize judicially the laws of the State of Washington?

Therefore, upon this petition setting forth the facts required by Revised Statutes, Sec. 754, was not not petitioner entitled to some answer or some denial if the facts were not true, that justice could be had?

The Court will observe that the requirements of the Revised Statutes and the Code of the State of Washington as to pleadings in Habeas Corpus are exactly the same. *Both have been literally and exactly complied with.*

THE COURT'S OPINION.

But it will be marked that the lower Court in no wise assumed or suggested that the petition was not in every wise complete in its detail of statements. *Relief or process was not denied upon any such grounds or even hinted by which petitioner could have amended* and pleaded with more particularity in order to obtain his rights. A privilege surely to be accorded him if merely defect in manner of statements stood in the way.

This is an appeal from the lower Court and from the reasons given for refusing any one of the following:

a. To issue the Writ,

b. To grant a rule to show cause, or

c. To restrain the Sheriff from taking the life of the prisoner pending some action in his behalf to protect his constitutional rights.

It will be noted that the Honorable Court below has filed no opinion and left no written opinion for his rulings to be brought before this Court. The oral observations can only be preserved and now presented for the purpose of showing that no question of pleading in anywise was present or controlling in the Court's action.

The case of *Cruemer vs. The State of Washington*, No. 457, had been before this Court upon the legality of his conviction for an offense alleged therein, the only question involved being the validity of the law of the State of Washington providing for the prosecuting of felonies by information, while this cause against the Sheriff and the State in form of Habeas

Corpus, a different one altogether, and upon a different point completely, is assumed by respondents to have been ruled by the former case because it was in the power of the petitioner in that case to have called to the Court's attention the points here raised, and this though at the time there was no attempt to take the action now threatened.

It is needless to suggest that one was a criminal case and the other a civil proceeding. They are in no wise dependent upon each other. The learned Court's observations, only incidentally mentioned here, were not only incorrect, but clearly establishes that no question of pleading, which is now raised to avoid the just conclusions which follow from this record, was ever before the mind of the Court or suggested by the respondents.

We respectfully urge that this cause must be reversed and remanded upon the admitted facts, with direction to grant the Writ and compel return that petitioner may obtain his constitutional rights.

Respectfully submitted,

JAS. HAMILTON LEWIS,
CHARLES A. RIDDLE,
JOHN W. PRATT,
Counsel for Appellant.

NOTE.

MURDER IN FIRST DEGREE DEFINED.

Every person who shall purposely, and of deliberate and premeditated malice, or in the perpetration, or attempt to perpetrate, any rape, arson, robbery, or burglary, or by administering poison, or causing the same to be done, kill another, shall be deemed guilty of murder in the first degree, and upon conviction thereof, shall suffer death, * * *

2 Hill's Code of Washington, (P. C.) Section 1.

MURDER IN SECOND DEGREE DEFINED.

Every person who shall purposely and maliciously, but without deliberation and premeditation, kill another, every such person shall be deemed guilty of murder in the second degree, and upon conviction thereof, shall be imprisoned in the penitentiary for a term not less than ten nor more than twenty years, and kept at hard labor.

2 Hill's Code of Washington, (P. C.) Section 3.

MANSLAUGHTER DEFINED.

Every person who shall unlawfully kill any human being without malice, express or implied, either voluntarily upon a sudden heat, or involuntarily, but in the commission of some unlawful act, shall be deemed guilty of manslaughter.

Any person convicted of manslaughter shall be punished by imprisonment in the penitentiary not less than one year nor more than twenty years, and shall be fined in any sum not exceeding five thousand dollars.

2 Hill's Code of Washington, (P. C.) Sections 7 and 11.

CRAEMER *v.* WASHINGTON STATE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON.

No. 466. Submitted October 12, 1897. — Decided October 25, 1897.

In the case of a petition for *habeas corpus* for relief from a detention under process alleged to be illegal, by reason of the invalidity of the process or proceedings under which the petitioner is held in custody, copies of

Statement of the Case.

such process or proceedings must be annexed to, or the essential parts thereof set out in the petition, mere averments of conclusions of law being necessarily inadequate.

In this case, which was an indictment for murder, the verdict being "guilty as charged"; and judgment of condemnation to death thereon being affirmed by the Supreme Court of the State; and this court having determined, on a former petition by the petitioner, that it had no jurisdiction to review that judgment, *Craemer* v. *Washington State*, 164 U. S. 704; and the time appointed for execution having passed, pending all these proceedings, it was within the power of the state court to make a subsequent appointment of another day therefor, and to issue a death warrant accordingly, and a judgment to that effect involved no violation of the Constitution of the United States.

This was an appeal from a final order of the Circuit Court of the United States for the District of Washington refusing a writ of *habeas corpus* on the face of the petition therefor. The petition averred that Henry Craemer, the petitioner, was a citizen of the United States, residing in the county of King in the State of Washington; that he was unlawfully held in custody by the sheriff of that county, who was about to take his life, under certain alleged process and authority, "wholly without authority of law, without the jurisdiction of any court, contrary to the law, and contrary to the rights of your petitioner as a citizen of the United States under the Constitution of the United States."

"That on or about the 23d day of August, 1894, he was charged by the State of Washington by information of three separate crimes in one count, to wit, the crime of murder in the first degree, to which the penalty of death attached upon conviction; murder in the second degree, to which a penalty of not less than ten nor more than twenty years' imprisonment in the penitentiary attached, and the offence of manslaughter, to which not less than two nor more than ten years' imprisonment in the penitentiary attached.

"That your petitioner was tried upon the said information upon issue joined in the Superior Court of King County.

"That to said issue a jury trying your petitioner did return him guilty of no greater offence than the offence of murder in the second degree, and by legal construction granting inferences and all presumptions in favor of your petitioner as

accused, finding your petitioner guilty of no higher offence than that of manslaughter.

"That the said jury in nowise found your petitioner guilty of murder in the first degree, to which the sentence and penalty of death could be inflicted.

"That the said verdict was rendered about the 12th day of September, 1894.

"That your petitioner appealed from the decision finding your petitioner guilty of murder in the second degree or of manslaughter to the Supreme Court of the State of Washington upon errors assigned, and the said judgment was affirmed.

"And, further, upon the validity of the process under which your petitioner was charged, to wit, as to whether or not your petitioner could be tried upon an information for his life, your petitioner appealed to the Supreme Court of the United States upon that point and that point alone, and the said Supreme Court dismissed said appeal, returning the said cause and all process to the Supreme Court of the State of Washington, to be dealt with as in manner and form of the law was both just and proper."

That no death warrant had been issued while the cause was on appeal, and that there had been no opportunity or occasion to complain in the Supreme Court of the State, or in any other court, as to the right to issue such warrant; that the cause was tried before Judge Humes, one of the judges of the Superior Court of the county of King; "that after the said cause had been disposed of in the Supreme Court of the State of Washington, and the Supreme Court of the United States, and returned to the Superior Court of the State of Washington for the execution of such process as would be legal in the premises," Judge Humes had been succeeded by Judge Jacobs; that on February 6, 1897, the State of Washington moved that petitioner be brought up for judgment and other process against him and that Judge Jacobs issue a warrant of death, and that petitioner duly objected to Judge Jacobs' passing sentence of death upon him and issuing a death warrant to the sheriff, and insisted that the court was without

jurisdiction to make such an order, and that such order would be in denial of due process of law and in violation of Article VI and of Article XIV of the Federal Constitution; but, notwithstanding his objections, petitioner was ordered to be executed on April 23, 1897.

That under the laws of the State of Washington, there was no time allowed further to appeal from that order to the Supreme Court of the State; that the governor of the State respited petitioner and stayed the execution of the death sentence until July 23, 1897; "that the next term of the Supreme Court of the State of Washington is not until the month of October, 1897, in which there would be any authority on the part of the court by any proceedings to review the unauthorized act of the said Judge Jacobs and of his honor the judge of the Superior Court," and the only remedy left petitioner as a citizen of the United States was application to the Circuit Court.

Petitioner prayed for the writ of *habeas corpus* and for the writ of certiorari to the Superior Court of the county of King ordering the record of the cause to be certified to the Circuit Court "for information, particularly the alleged information, the verdict, the judgment and the death warrant made in the premises, and all other journal entries and orders in the cause."

The appeal came before this court on motions to dismiss or affirm.

Mr. W. C. Jones for the motion. *Mr. Patrick Henry Winston* and *Mr. James F. McElroy* were on his brief.

Mr. James Hamilton Lewis opposing. *Mr. Charles A. Riddle* and *Mr. John W. Pratt* were on his brief.

Mr. Chief Justice Fuller, after stating the case, delivered the opinion of the court.

Under existing statutory provisions appeals may be taken to this court from final decisions of the Circuit Courts in

habeas corpus, in cases, among others, where the applicant for the writ is alleged to be restrained of his liberty in violation of the Constitution or of some law or treaty of the United States, and if the restraint is by any state court or by or under the authority of any State, further proceedings cannot be had against him pending the appeal. Rev. Stat. §§ 763, 764, 766; act of March 3, 1885, c. 353, 23 Stat. 437.

Such being the law, it has happened in numerous instances that applications for the writ have been made, and appeals taken from refusals to grant it, quite destitute of meritorious grounds, and operating only to delay the administration of justice.

From the petition in this case it appeared that petitioner was held by the sheriff of King County, Washington, to be executed in pursuance of a judgment and sentence of death rendered by the Superior Court of that county, and warrant issued thereon; that that judgment had been affirmed by the Supreme Court of the State; and that this court had heretofore determined that it had no jurisdiction to interfere in revision of that judgment. See also *State* v. *Craemer*, 12 Washington, 217; *Craemer* v. *Washington*, 164 U. S. 704.

Nevertheless petitioner insisted that the judgment against him was void because in contravention of the Constitution of the United States, and that the judgment of this court in dismissing his writ of error was not to be regarded, as he had not in fact seen fit to raise in maintenance of that writ the particular point on which he now relied.

That point seems to be that the verdict returned against him on the information on which he was tried was either so uncertain that judgment could not be entered thereon, or amounted to no more than a verdict finding him guilty of murder in the second degree, or of manslaughter, in respect of either of which crimes the punishment of death was not denounced.

By section 754 of the Revised Statutes it is provided that the complaint in *habeas corpus* shall set forth "the facts concerning the detention of the party restrained, in whose custody he is detained, and by virtue of what claim or authority, if known." The general rule is undoubted that if the deten-

tion is claimed to be unlawful by reason of the invalidity of the process or proceedings under which the party is held in custody, copies of such process or proceedings must be annexed to or the essential parts thereof set out in the petition, and mere averments of conclusions of law are necessarily inadequate. *Whitten* v. *Tomlinson*, 160 U. S. 231; *Kohl* v. *Lehlback*, 160 U. S. 293; Church on Habeas Corpus, 2d ed. § 91, and cases cited.

Copies of the information, the verdict, and the judgment thereon were not attached to this petition, nor the essential parts thereof stated, nor any cause assigned for such omission. In that regard the petition was wholly insufficient.

But reference was made to the record of the case in the Superior Court of King County, in the Supreme Court of the State, and in this court. The record here, to which we may properly refer, *Butler* v. *Eaton*, 141 U. S. 240, shows that the information charged Craemer with the crime of murder in the first degree; that the jury "found him guilty as charged;" that he was adjudged guilty of the crime of murder in the first degree, and sentenced to death; that the judgment was affirmed; and that the writ of error to the state court was dismissed.

If the point now suggested was not in fact specifically raised in the Supreme Court of the State on appeal, or in this court on writ of error, it must not be assumed that any point on which the jurisdiction might have been sustained was overlooked.

Moreover, the settled law of the State was adverse to petitioner's contention as urged before the Circuit Court, and no ground existed which could justify that court in refusing to accept it.

The statutes of Washington define murder in the first degree and prescribe the punishment of death upon conviction; the crime of murder in the second degree, and punishment by imprisonment in the penitentiary for a term not less than ten nor more than twenty years; and the crime of manslaughter, and punishment by like imprisonment not less than one year nor more than twenty years, and a fine in any sum not ex-

ceeding five thousand dollars. 2 Hill's Codes, 642, 644, 646; Wash. Penal Code, §§ 1, 3, 7 and 11. On an indictment or information charging an offence consisting of different degrees a jury may find the defendant not guilty of the degree charged, but guilty of any degree inferior thereto, and in all other cases defendant may be found guilty of an offence, the commission of which is necessarily included within that with which he is charged. The form of the verdict is also prescribed as follows: "We, the jury, in the case of the State of Washington, plaintiff, against ———, defendant, find the defendant (guilty or not guilty, as the case may be)." 2 Hill's Codes, 509; Penal Code, §§ 1319, 1320 and 1325; Laws Wash. 1891, 60, c. 28, §§ 75, 76. The Code of the Territory was to the same effect. §§ 786, 790, 793, 798, 1097, 1098 and 1103.

In *Timmerman* v. *Washington Territory*, 3 Wash. Ter. 445, the defendant was indicted for the crime of murder in the first degree, and the jury returned a verdict in the statutory form. It was argued, on error, that the verdict was defective in that the defendant might have been found guilty of murder in the first or second degree, or of manslaughter, and that, therefore, the verdict was uncertain and sentence could not be pronounced upon him; but the Supreme Court of the Territory held upon consideration of sections 1097, 1098 and 1103 of the Code, which are sections 1319, 1320 and 1325, as numbered in Hill's Codes of the State, that if the jury found the defendant guilty of an offence of an inferior degree to that charged, the verdict must specify it, but if the verdict was intended to be guilty of the degree charged, there would be no necessity for so specifying it, and that the jury having used the statutory form there was no uncertainty as to the fact thus found; and that the objection was untenable.

In this case the verdict was "guilty as charged," and judgment of condemnation to death thereon was affirmed by the Supreme Court of the State as has been said. 12 Washington, 217. The time appointed for execution having passed, the subsequent appointment of another day and the issue of the death warrant were in accordance with statute. Hill's Codes, §§ 1351, 1354.

Statement of the Case.

Apart then from the insufficiency of the petition and the legal effect of the previous judgment of this court, the final order of the Circuit Court must be held to have been properly entered, in that the rendition of the judgment complained of involved no violation of the Constitution of the United States.

Affirmed.